PATENT

Atty Docket No.: 70006393-1
App. Ser. No.: 09/943,027

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

By virtue of the amendments above, Claims 1 and 10 have been amended. In addition, Claims 11-16 have been added. Accordingly, Claims 1-16 are pending in the present application, of which Claims 1, 10, and 11 are independent.

No new matter has been introduced by way of the claim amendments or additions; entry thereof is therefore respectfully requested.

Status of Official Action

The present Official Action is the second reply to an Appeal Brief filed on September 11, 2006. The first Official Action was mailed on January 26, 2007 and reopened prosecution of the present application by presenting a new grounds of rejection, but was still made final. The present Official Action was issued to replace the first Official Action because the first Official Action was improperly held to be final as discussed in greater detail herein below. As such, the present Official Action should accurately be considered as a non-final Office Action.

In any regard, the rejections presented in the present Official Action are hereby traversed for at least the following reasons.

Improper Indication of Finality

In section 2 of the Office Action Summary, both the "FINAL" and the "Non-Final" boxes have improperly been checked. Clearly, the present Official Action has not properly

been made Final because the Official Action does not include a concluding paragraph asserting why the present Official Action has properly been held to be a "Final" Official Action. In addition, as discussed in the following section, the Examiner agreed that the finality of the Official Action dated January 26, 2007 was improper, which prompted the issuance of the present Official Action in the first place.

The Examiner is therefore respectfully requested to clarify that the present Official Action was improperly made final and that the checking of the box labeled "FINAL" in the Office Action Summary is a typographical error.

Telephone Interview with Examiner

The undersigned wishes to thank Examiner Vig for his courtesies during the telephone interview conducted on April 23, 2007. As agreed upon during that telephone interview, the Official Action mailed on January 26, 2007 was improperly made "Final", which prompted the mailing of the present non-final Official Action.

Allowable Subject Matter

The indication that Claims 4-7 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims is noted with appreciation. By virtue of the amendments above, Claims 11-16 have been added to incorporate the subject matter of Claims 4-7. As such, it is respectfully submitted that new Claims 11-16 are allowable over the cited documents of record.

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Independent Claims 1 and 10, and the claims that depend therefrom, are also considered to be allowable over the cited documents of record for at least the reasons set forth herein below.

Drawings

Throughout prosecution of the present application, an indication as to whether the drawings submitted on August 29, 2001 have been accepted by the Examiner has not been made. However, because no specific objections to the drawings have been presented in any of the previous Official Actions, the drawings are believed to have been accepted. Should this assumption be in error, the Examiner is respectfully requested to inform the Applicants in a future correspondence.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 1-3 and 8-10 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over "Tutorial: A Little Help With Alcatel-Lucent nmake", hereinafter "ALU". This rejection is respectfully traversed for at least the following reasons.

Claim 1 of the present invention pertains to, *inter alia*, a method for executing a work flow in a workflow management system, in which each process instance is checked during the execution of an original process definition to determine whether the process instance meets a migration condition and each process instance is migrated during the execution of the original process definition to a modified process definition if the migration condition is met, such that the process instance executes the changed process definition.

Claim 10 of the present invention pertains to, *inter alia*, a method for creating a process definition to be executed by a workflow management system, in which an original process definition to be executed in a work flow system is defined, execution of the process instance is started as per the original process definition, a modified process definition is defined, each process instance is checked to determine whether a migration condition is met, and the nodes of the original process definition in a running process instance satisfying the migration condition is replaced by the corresponding nodes of the modified process definition, such that the running process instance executes the modified process definition.

As such, both independent Claims 1 and 10 recite the steps of checking each process instance during execution of an original process definition to determine whether a migration condition is met. These claims also recite that each process instance is migrated during

execution of the original process if the migration condition is met such that the process instance executes the changed process definition. The process instance may be migrated by replacing the nodes of the original process definition with corresponding nodes of the modified process definition.

As discussed at least on page 6 of the Specification, the migration condition for a process instance may be met, for instance, if the current state of execution for the process instance has not gone beyond one of the worst case migration nodes. The worst case migration nodes are defined as providing points of continuity for migration and existing in both the original process definition and in the modified process definition.

In rejecting Claims 1 and 10 of the present invention, the Official Action equates "executing a work flow" to the building of an application, the "WFMS" to an "application building environment", the "process instance executing an original process definition" to code or an object file, and the "changed process definition" to a modified code or a new object file. The Official Action also asserts that the ALU document discloses that the process instance is migrated to the changed process definition.

The Official Action further asserts that the ALU document discloses the "checking" step claimed in Claims 1 and 10 of the present invention based upon the assertion that "if the object file is up to date nmake reads it instead of makefile, otherwise nmake reads the makefile and builds a new objectfile." The Official Action appears to assert that a "migration condition" in the ALU document is met if the object file is not up to date.

It is unclear, however, as to which element in the ALU document the Official Action considers as being equivalent to the claimed "original process definition," since the Official Action leaves this open to being either the nmake command or the code or object files that

nmake builds. Since the Official Action asserts that the building of an application is equivalent to the claimed work flow, it will be assumed that the Official Action intended for the nmake command to read on the original process definition.

The assertions and analogies made by the Official Action are clearly improper and should therefore be withdrawn. The nmake command is a well known build command that takes source files (such as, C, C++, etc., files) and converts them to object files and then finally to executable files. As such, when the nmake command is being executed, it converts source files to object files and then to executable files. Once the executable files have been created and are executing, the nmake command does not influence the executable files in any manner. As such, each time a new executable file is created using nmake, the previous instance must be brought down and the newly created executable file is re-deployed. Therefore, the nmake command only helps in the creation of the executable files and thus, contrary to the assertions made in the Official Action, the nmake command is not capable of migrating the executable files.

In other words, nmake does not check the executable files as they are running and thus cannot be considered as being equivalent to the claimed checking of each process instance during the execution of the original process definition to determine whether a migration condition is met as claimed in Claims 1 and 10 of the present invention.

In addition, the Official Action correctly notes that the ALU document fails to disclose "migrating each process instance (or "replacing the nodes of the original process definition in a running process instance") during the execution of the original process definition to a modified process definition" as claimed in Claims 1 and 10 of the present invention. The Official Action, however, incorrectly asserts that this would have been

obvious in the ALU document on the basis that "it is old and known to one of ordinary skill in the art that in compilation, when a code is compiled, any modification in the include file are used by the compiler to generate a new running application (e.g. .dll, .com, .exe file)." This assertion is incorrect because, as discussed above, the nmake command only helps in the creation of the executable files and thus, is not capable of migrating the executable files.

For at least the foregoing reasons, it is respectfully submitted that the proposed modification of the ALU document fails to yield all of the features of independent Claims 1 and 10 and the claims that depend therefrom, and therefore, a *prima facie* case of obviousness has not been established under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claims 1 and 10 and to allow these claims.

Depending Claims 2, 3, 8, and 9 are also allowable over the ALU document at least by virtue of their dependencies upon allowable independent Claim 1.

Newly Added Claims

New Claims 11-16 have been added to further define the scope of the invention. These claims are allowable over the cited documents of record at least because they contain subject matter deemed by the Official Action to be allowable.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

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Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below.

Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: July 30, 2007

By _____

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